IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-1649

Henry Merritt Farnum
Applicant for Admission to the Bar
of the State of New York
Appellant

v.

Committee on Character and Fitness
Supreme Court of the State of New York
Appellate Division, First Judicial Department
Appellee

APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

Jurisdictional Statement

Henry Merritt Farnum
Appellant, *pro se*

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225 E. 46 Street
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CITATIONS

CASES:

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JURISDICTIONAL STATEMENT

OPINION BELOW

The decisions of the Court of Appeals of the State of New York are set forth in Appendices C-4 and C-5, *infra;* and the opinions of the Appellate Division in Appendices C-1 thru C-3.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. sec. 1257(2), this being an appeal which draws into question the validity of the New York Mental Hygiene Law: *Consolidated Laws*, 1971,

Vol. 34-A, Chapter 27, Article 2, Sec. 20, and Art. 3, Sec. 34(9) and 34(16) *infra*, Appendix B-2 and B-3; and *Consolidated Laws*, 1951, Art. 5, sec. 74, repealed L. 1964, c. 738, sec. 5, *infra*, B-4 and B-5; on the ground that they are repugnant to the Constitution of the United States.

Appellant's application for admission to the Bar of the State of New York was finally denied in a fourth interview before the appellee September 30, 1974. (Appee. Aff. 10-17-74, para. 11;

> ...failing petitioner's consent to the psychiatric examination...it would enter a report to the Court stating that the Committee failed to find that petitioner displays sufficient fitness to warrant its recommendation for his admission. This it has not done and will not until completion of this proceeding....

and para. 33,

> The Committee is willing to withhold any recommendation, absent an examination by a court-appointed psychiatrist, pending the outcome of this application and any appeal therefrom.

The sole ground of denial was appellant's refusal to submit to a psychiatric examination based upon and using a concealed record of appellant's hospitalization for fourteen months in 1956. On the facts *infra*, such hospitalization presumably was based upon said 1951 State statute, Art. 5, sec. 74, repealed in 1964. Said statute gives authority for detention without any of the six essential elements of Due Process under the Fourteenth Amendment. Said record has been concealed from the appellant despite his formal demand therefor in 1956. Said concealment of said secret record is under authority, *inter alia*, of said Art. 2, sec. 20 and Art. 3, sec. 34 of *Consolidated Laws*,

both in 1971 and 1951 revisions. Six of the eight Constitutional issues in this appeal were submitted in a petition to the appellee March 25, 1974, for the third interview. The seventh said issue of new evidence discovered in appellee's files December 16, 1974, was urged December 23, 1974, with appellant's motion for reargument. The eighth said issue on the exercise of First Amendment right to petition his government, was urged in appellant's brief dated December 10, 1975, and filed in the Court of Appeals January 15, 1976, and similar brief dated January 31, 1975, similarly filed February 4, 1975.

Appellant's Article 78 proceeding was filed in the Appellate Division, First Department, on October 2, 1974, after said fourth interview. Appellant's petition, and motions for a stay and for reargument, were denied by opinions of said Appellate Division October 31, 1974, December 3, 1974, and January 21, 1975, respectively. Timely notices to the Court of Appeals of the State of New York were filed November 10, and February 20, 1975.

Appellee by letter to the appellant January 7, 1975, agreed to the record on appeal, and proposed an agreeable procedure therefor, which appellant implemented, with his brief ready to file, by letter to the Clerk of said Court December 10, 1974 requesting the Court to request said record. Appellee at no time has objected to the timeliness of appellant's said letter December 10, and at all times has requested decision by the Court of Appeals on the merits (Appellee's affidavit January 16, 1975, para. 3, and each of Exhibits A, B, C, and D therein.)

Appellant's said letter to said Court December 10 was timely under the published Court rules until the rules received November 6, fourteen days before the nine-month period under the new rule would expire. (*Infra*, A-3.) The Court of Appeals by order December 22, 1975, dismissed the appeal under said new nine-month rule, and by decision February 12, 1976, denied appellant's motion to vacate.

Appellant's respect for the rules of the Court of Appeals has been evidenced by meticulous compliance with the other rules as published. The excellent new nine-month rule could readily have been met, if known. Appellant respects the right of the Court to change its rules, and accepts the duty to tap the stream of such new information in the practice of law, when he is permitted to practice.

Therefore decision by the Court of Appeals on the construction of statutes of its State has been by-passed by local rules of procedure.

The decision of the Court of Appeals is final. The eight Constitutional issues are clearly set forth, in the Court of Appeals, in the Appellate Division, and in the period of four interviews with the appellee.

The Court of Appeals' orders in its discretion leaves the decision on the Constitutional issues either to this Court, or to a federal District Court. Appellant has acted with some diligence to seek to give the courts of the State the opportunity to decide Constitutional issues relating to statutes of the State. Appellant respectfully urges an end to this litigation since 1957, by a decision of this Court.

Notice of Appeal to this Court from the Court of Appeals of the State of New York was filed February 17, 1976, in the Appellate Division of the State of New York, First Department, the court possessed of the record on appeal. (*Infra*, A-4 and A-5.)

In the event that this Court does not consider appeal the proper mode of review, appellant requests that this appeal as taken be regarded and acted upon as a petition for a writ of certiorari pursuant to 28 U.S.C. sec. 2103.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the First and Fourteenth Amendments to the Constitution of the United States.

This case also involves the following sections of New York statutes, *Consolidated Laws*:

(1971) and (1951), Vol. 34-A, Ch. 27, Mental Hygiene Law, Art. 2, sec. 20 and Art. 3, sec. 34(9) and 34(16), *infra*, B-2 and B-3;

(1971) sec. 70, *infra*, B-3 and B-4;

(1951), Mental Hygiene Law, Art. 5, sec. 74(1), 74(3), and 74(7); and

(1951) Civil Practice Act, sec. 352 (in 1971 *Consolidated Laws*, CPLR, sec. 4504(a)), *infra*, B-1 and B-2.

The Equal Protection Clause of the Fourteenth Amendment is involved as to each of the eight Constitutional issues, for the reasons set forth in the Petition, and in the brief filed in the Court of Appeals. Each involves an unreasonable distinction between a person who has been subjected to an unconstitutional act, and a person who has not.

QUESTION PRESENTED

On the issue of present fitness of an applicant:

1. Can a Character Committee demand a psychiatric examination on the subject matter of a hospital record kept secret despite said applicant's protest 20 years ago, said secret record involving no issue of misconduct?

2. Can a Character Committee demand a psychiatric examination on the ground that an applicant is "neurotic...in fact, psychotic" to exercise his First Amendment right herein to petition his government?

3. Can a Character Committee admit the relevance of a current, favorable psychiatric evaluation by the entity which initiated a hospitalization 20 years ago, and nevertheless decline to use said current evaluation?

STATEMENT OF THE CASE

Appellant, Henry Merritt Farnum, is an applicant for admission to the Bar of the State of New York, having been certified by the State Board of Law Examiners on June 6, 1973. He is a citizen of the United States, and resident of the State of New York since 1950, now at Executive House, 225 E. 46th Street, New York, New York 10017. Appellee affirms that there is no issue of misconduct in said application.

> "...We have no question of misconduct here...." (Transcript, third interview with Appellee, page 8, hereafter Tr. III:8) See also Tr. III:3, Tr. IV:11, and Appellee's Affidavit in Opposition Oct. 17, 1974 (hereafter Appee. Aff. 10-17-74), para. 26.

The only issue in said application is appellant's fitness because of his hospitalization for 14 months ending in February, 1957, in Manhattan State Hospital.

> "It is what our inquiry here requires us to obtain from you, [the concealed hospital record] in order to clear up this cloudy situation with respect *to an application which on its face would seem to be simple.*" (Tr. I:13, emphasis added.)

> "You certainly appear to be competent." (Tr. I:21.)

In December, 1973, appellant was admitted to the Bar of the District of Columbia and joined the American Bar Association. In April, 1974, appellant was admitted to the Bar of his native State of Maine. Both Bars were notified by the appellant of the hospitalization at issue herein.

(Petition October 2, 1974, hereafter Petition, Exhibits A-1 and A-2.)

In 1957, appellant had challenged the New York Mental Hygiene Law for violating the Constitution of the United States. including Art. 2, Sec. 20 and Art. 3, Sec. 34 of said Statute authorizing the State to conceal from the appellant the record of said hospitalization including any notice of any allegations of appellant's unfitness, or any evidence of compliance by the State with any element of Due Process of Law in any proceeding (if any) involving the appellant, or at any other time. (***Farnum v. New York State et al.***, USDC, SCNY, Civ. No. 123-315. Dismissed November 7, 1957, Ryan, J. Docket shown in Petition, Exhibit F. Certiorari denied, United States Supreme Court, 1958, 357 U.S. 919, 2 L.E. 2d 1363, 78 S.Ct. 1360. No written opinion.)

In 1967 in other cases the United States Supreme Court upheld said Constitutional principles that appellant had argued ten years previously. Now, nine years after said Supreme Court decisions, appellant's appeal in this Court reasserts said Constitutional principles which he urged in 1957. [Appellant's complaint, and quotations from the record, in Petition, paras. 11 to 20, and Exhibits B-2, and D thru G.]

1. Appellee's demand for psychiatric examination in 1976 using said secret 1956 hospital record

The appellee demands that the appellant submit to a psychiatric examination as to any allegations in said concealed hospital record. (Tr. II:2, lines 23-5; Tr. IV:21; Appee. Aff. 10-17-74, para. 8, lines 4-5.)

Five months after appellant's release in February, 1957,

he was discharged from convalescent care on July 25, 1957, a fact admitted by the State of New York. (***Farnum v. New York State, etc.***, Answer filed September 6, 1957, "Third Defense." Also admitted by Defendant's Notice of Motion and Cross-Motion filed October 10, 1957, in affidavit of Asst. A.G. describing December 13, 1955 and July 25, 1957, as the "...dates of commitment and discharge.") Said discharge was final and unconditional.

2. Appellee's characterization of appellant's exercise of his right to petition his government

Only after appellant filed his petition on October 2, 1974 in an Article 78 proceeding did the appellee comment in the public record on the present fitness of the appellant. The appellee then described appellant's exercise of his right under the First Amendment to petition his government as "neurotic—in fact, psychotic...." (Aff. Resp. 10-17-74, para. 17), although admitting that the foregoing characterization "may not be manifest from reading of the four transcripts of the hearings." (*Ibid.*)

3. Appellant's favorable result in 1976 psychiatric examination

On any issue of the present fitness of the applicant, appellee has declined to date (as far as appellant knows) to receive the favorable results of an unlimited psychiatric examination of the appellant on February 17, 1976, said examination conducted despite appellant's protest; Appellee unqualifiedly admits the relevance of said examination. Said examination was conducted in the complete and unrestrained discretion of the City of New York, which initiated said hospitalization of the appellant in 1956.

The formal notification dated April 12, 1976, of the result of said examination states without any reservation "QUALIFIED medically (After Psychiatric Evaluation)." (Appendix A-1 herein, Notice of Personnel Director Action April 12, 1976, item No. 76-1263.) Said examination February 17, 1976, was unlimited in scope, and included the interview by a psychiatrist, and 560 questions in the Minnesota Multi-Phasic written examination.

Said examination was offered to the appellee without limitation by the appellant in writing February 28, 1976. The appellee admitted the relevance of said examination March 2, 1976 (Appendix A-2 herein. Said examination was under protest by appellant, who enclosed and cited a draft copy of the brief which he filed in this case in the Court of Appeals of the State of New York. Appellant's offer of said examination to the appellee was prior to any foreknowledge of said favorable result.

Therefore, altho the appellee has based its action on said secret record of hospitalization from which appellant was unconditionally discharged nineteen years ago, appellee declined to use as the basis for said action a complete psychiatric evaluation in 1976 from the City of New York which initiated said hospitalization twenty years ago.

Appellant purged himself as to the facts relevant to said hospitalization by his two affidavits originally sworn March 25, 1974, first affidavit "Petitioner's Academic Study and Patent Research for TV--1951-1955," (Petition, Exhibit C), and second affidavit "Brief Summary of Facts during Hospitalization," (Sworn Petition: Exhibit J, and also para. 6). In said affidavits appellant states that his only voluntary contact with any mental hospital at any time was in 1955, beginning in September, for the sole purpose of seeking assistance in locating a person in an out-of-state

mental hospital. He also proposed a charade for that purpose and to promote his patent application for interactive television filed in March, 1954. A patent was issued in 1969 for the disclosure in said application. (Petition, Exhibits C-2 to C-12.]

Appellant's said second affidavit further states that during his hospitalization he took no oral medication, flushing it all down the drain, and that he was not subjected to any oral or written psychiatric interviews or tests.

Said second affidavit further states that appellant's hospitalization was without notice of any allegations, hearing thereon, notice of any hearing, court order from any hearing, or any other essential element of due process at any time: not at the time of initial detention, not after six months, or after twelve months or at any other time during the said fourteen month period, or at any other time.

No evidence contraverting any of those facts has been presented by the appellee or by the State.

Litigation

1957 – *Farnum v. New York State Department of Mental Hygiene*

Four days after his unconditional discharge in July 1957, appellant in writing demanded from Manhattan State Hospital the record of any proceeding including "reference numbers and codes" thereof, and relevant hospital records. The hospital by letter ten days later refused any of that information as "confidential." (Petition, Exhibits D and E.)

Appellant's complaint on August 19th, 1957, challenged the denial of all essential elements of due process, including withholding of the record, as violations of the Due Process Clause of the Fourteenth Amendment, and as denial of equal rights under the law. (*Farnum v. New York State et al.)*

The affidavit of the State of New York in response to that complaint claimed that "...*said records, exclusive of the dates of commitment and discharge, are confidential communications,* pursuant to the provisions of the Mental Hygiene Law and section 352 of the Civil Practice Act." (Appellant's petition, para. 16, quoting said affidavit Oct. 9, 1957, Harold Borgwald, Esq., "acting under Louis J. Lefkowitz, Attorney General;" emphasis added.) Appellee reaffirms that privilege of confidentiality to this date. (Appee. Aff.10-17-75, para. 7.) Therefore those secret records will be with this Court for use of the Court and the appellee only.

Therefore there were no allegations conforming to any of the essential elements of the Due Process Clause, in appellant's hospitalization for fourteen months in 1956.

1967–In Supreme Court of the United States, other cases

In 1967, in other cases, the Supreme Court of the United States upheld appellant's legal argument in 1957, ruling that the essential elements of the Due Process Clause of the Fourteenth Amendment apply to involuntary commitment proceedings. (*Specht v. Patterson*, 386 U.S. 605, (1967), and *In Re Gault*, 387 U.S. 1 (1967). The essential elements of the Due Process Clause are held to be retroactive (*Gideon v. Wainwright*, 372 U.S. 335 (1963); *Heryford v. Parker*, 396 F.2d 393, 396-7, (10th Cir. 1968), at pp. 396-7. The unconstitutionality of

detention is held to be relevant after discharge, as long as it is possible that "any collateral legal consequence will be imposed on the basis of the challenged [commitment]...." *In re Ballay* 482 F.2d 648 (1973) at 651, applying to a civil issue the case of *Sibron v. New York*, 392 U.S. 40, 57, 88 S.Ct. 1889, 1900, 20 L.Ed.2d 917 (1968).

1974 – This Appeal

On September 30, 1973, in their first interview, the appellee demanded that the appellant authorize the appellee to receive from the hospital the secret record. The issues were appellant's conduct which led to his hospitalization, and the fact of his discharge in July, 1957. The appellee's said demand to the appellant gave no hint of any invariable rule by the appellee requiring that any applicant who has ever been involuntarily retained in a mental hospital submit to a psychiatric examination. (Appellee's first letter to said hospital dated October 2, 1973.)

Without notice to the appellant directly or indirectly, the appellee on November 27, 1973, sent a second letter to said hospital. Paragraphs 5 and 6 of said second letter requested evaluation of appellant's competency on the day of his unconditional discharge, and thereafter, said evaluation to have been made in 1956 at the moment of final discharge (said para. 5), or in 1973 using said secret record from 1956 (said para. 6). The State replied through the Attorney General on December 20, 1973, with "all your questions answered." Neither the request nor the answer were known to the appellant until after the fourth and final interview September 30, 1974, and after this petition now on appeal to this Court was filed on October 2, 1974. Appellant discovered those two letters when he reviewed the appellee's file on December 16,

1974 to prepare the record for this case. (Appellant's Affidavit December 20, 1974, with Exhibits 2 and 3.)

Therefore there have been no allegations by the appellee or the State conforming to any of the essential elements of the Due Process Clause of the Fourteenth Amendment at any time in appellant's lifetime.

The appellee held four interviews on this application. At the first interview, September 30, 1973, appellee demanded the record of hospitalization. At the second interview, February 4, 1974, appellee demanded that appellant submit to a psychiatric examination (using the concealed 1957 hospital record). That issue was deferred to permit the appellant to study for the Maine Bar examination.

HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW

Six United States Constitutional issues were raised by the appellant in said four interviews with the appellee. Said six issues were set forth in appellant's first draft of a petition filed with the appellee March 25, 1974, in preparation for the third interview April 29, 1974. The seventh Constitutional issue was urged in appellant's motion for reargument in the Appellate Division, with an eighth Constitutional issue urged in appellant's brief filed in the New York Court of Appeals, as set forth under "Jurisdiction" *supra*. Appellant sets forth said eight issues *infra*. Seven said issues are the "seven reasons" why appellee's demand for a psychiatric interview violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The eighth said issue is impairment of appellant's right to petition his government under the First Amendment.

At said four interviews with appellee, the appellant briefly summarized said first thru sixth Constitutional rights to meet each issue presented by the action of appellee. (Tr. I, pp. 11, 12, 22 and 23; II:8, lines 15-17; III:pp.7-10, 12-13, and 20; IV:p.8, lines 14-21, p. 12, lines 4-7, p.14, lines 7-8, p. 16, lines 19-21, p. 21,lines 14-17, p. 25, lines 8-9, p.29, line 9, to p. 29, line 4, p. 29, lines 21-22, p. 30, lines 2-6, p. 35, lines 2-3, p. 36, lines 7-9, p. 39, lines 10 and 17-20.)

Appellant rejected each of said Constitutional issues as irrelevant:

> Petitioner's argument that his confinement and the hospital's refusal to disclose the records was unconstitutional has no bearing on the present request for the use of the record in a present psychiatric examination.... [petitioner's other achievements] are *likewise irrelevant and immaterial.*" (Resp. Aff. 10-17-74, paras. 24-5, emphasis added.)

The appellee asserts that the appellant waived all rights to Due Process of Law, and all Constitutional rights, by applying for admission to the Bar. (Resp. Aff. 10-17-74, paras. 15, 16.)

Because appellee held all Constitutional issues to be irrelevant, it held after said fourth and final interview September 30, 1974, that "it would enter a report to the Court stating that the Committee failed to find that petitioner displays sufficient fitness to warrant its recommendation for his admission...." (Appee. Aff. 10-17-74, para. 11.)

Said appellee's argument that all Constitutional arguments are "irrelevant" persuaded the Court of the Appellate Division to reject each of the said seven Constitutional arguments without further comment. The Appellate Division denied appellant's Petition by the orders of said Court October 31

and December 3, 1974, and January 21, 1975. (*Infra*, C-1 thru C-3.)

In appellant's brief filed with the Court of Appeals by appellant's motion January 15, 1976, and served February 4, 1975, he was joined by appellee's affidavit January 16, 1976, para. 3, and annexed Exhibits A, B, and C, in requesting a decision on the merits. Appellant argued the said seven Constitutional issues, and an eighth said issue: Appellee's characterization as "neurotic—in fact, psychotic," of appellant's exercise of his right to petition his government on said seven Constitutional issues, is repugnant to the First Amendment, the Right to Petition Clause, made applicable to the State by the Privileges and Immunities Clause of the Fourteenth Amendment. (Appellant's said brief filed in the Court of Appeals, Point VIII.) Said brief supported each of the eight Constitutional arguments by each case cited *infra*.

The Court of Appeals dismissed appellant's appeal by its decision without opinion December 22, 1975, on the ground of the new nine-month rule shelved in the Bar Library on the previous November 6th, fourteen days before the expiration of said nine months. Appellant's Motion to Vacate was denied by a decisicn without opinion filed February 12, 1976.

Said final decision by the Court of Appeals has the effect of upholding the Constitutionality of the New York Mental Hygiene Law, *Consolidated Laws*, (1971), Vol. 34-A, Chapter 27, Art. 2, and Art. 3, Sec. 34(9) and 34(16); and *Consolidated Laws*, (1951), Art. 5, sec. 74, repealed in 1964. Each said statute is permitted to be applied to the appellant thruout the entire period of 20 years since December, 1975, as urged by the appellee and thrice held by the Appellate Division.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

Appellant's regard for the appellee, the prestigious Character Committee of the Appellate Division in the First Department, in New York, metropolis of the nation, is entirely one of respect. The issue is not personalities. The issue is the law.

Appellee is concentrating upon its "rule," that any applicant who ever has been retained involuntarily under certain circumstances, however unjust, must submit to a psychiatric examination based upon the record of said retention, even tho no misconduct is involved.

I. APPELLEE'S DEMAND FOR A PSYCHIATRIC EXAMINATION USING THE SECRET 1956 HOSPITAL RECORD, VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT FOR SEVEN REASONS, EACH CONCLUSIVE IN THIS APPEAL

FIRST REASON: THE UNCONSTITUTIONALITY OF APPELLANT'S HOSPITALIZATION IN 1956 PRECLUDES ANY NEGATIVE INFERENCE AS TO COMPETENCY AT ANY TIME

A. Due Process requires many essential elements.

Fortunately for the appellant, this Court has found the law to be what appellant had urged earlier in 1957, that the Due Process Clause of the Fourteenth Amendment applies to civil commitments. *Specht v. Patterson*, 386 U.S. 605, 608, (1967); *In re Gault*, 387 U.S. 1, 42. See also *Donaldson v. O'Connor*, 493 F2d 507, 520 (5th Cir. 1974); *Lynch et al v. Baxley et al.*, (USDC, Ala. Mid.Dist.,N.Div., Dec., 1974, 386 F.Supp. 378).

The following elements in specific cases have been held to be essential elements of Due Process of Law.

1. Notice of hearing.

Including "the specific issues that they must meet," and "sufficiently in advance of scheduled court proceedings...." *In re Gault*, 387 U.S. 1,33.

See also *Lessard v. Schmidt*, 349 F.Supp. 1078, 1092 (U.S.Dist.,E.Dist.Wis., 1972).

The New York statute in 1951 and 1971 requires that the hospital record show the patient's

> name...the date of such reception, by whom brought and by what authority and on whose petition certified or received, and an abstract of all orders, warrants, requests, petitions, certificates and other papers accompany such persons.... (*Infra*, B-3.)

Therefore said hospital record must by law show if there was any hearing, or notice thereof.

Secrecy of said record at the time of hearing violated the essential element of Due Process, namely notice of hearing.

Secrecy of said record thereafter covers up the lack of any hearing, and the lack of any notice thereof, in violation of the Due Process Clause of the Fourteenth Amendment.

Appellant's Petition sworn October 1, 1974, stated specifically whether each element of Due Process was given in said 1956 hospitalization. As to notice of hearing, there was none. (Petition, paras. 33 to 35.)

Therefore the secrecy of said 1956 hospital record is repugnant to the Constitution in covering up the lack of an essential element of Due Process.

For simplicity, said 1956 hospitalization is here summarized as to all essential elements of Due Process. Said 1956 hospitalization was:

without allegations or notice of hearing thereon (paras. 33 to 35);
without presence of appellant at any hearing (paras. 33 to 35);
without the right to counsel at any hearing (paras. 33 to 35);

without findings to support an order of commitment (para. 36),
without any essential element in the conduct of any hearing (paras. 33 to 35),
without any right to a record of proceedings, although the statute requires that said 1956 hospital record in fact include said record of proceedings (*Infra*, B-3; and Petition, paras. 31 thru 38.)

Therefore said 1956 lacked every essential element of Due Process in violation of the Due Process Clause of the Fourteenth Amendment. Furthermore, the secrecy of said 1956 record covered up the complete absence of any element of Due Process, in 1957 and also in 1976.

2. Presence of person proposed to be committed. *Specht v. Patterson, supra,* at 610.

3. Right to Counsel (*In re Gault, supra,* at 1451. "...at all significant stages of the commitment process. *Heryford v. Parker, supra* at 396; *Lynch v. Baxley, supra.*

4. Requisite findings to support an order of commitment. *Lynch v. Baxley, supra,* at 393.

5. Essential elements in conduct of each commitment hearing. Including "...sworn testimony subjected to the opportunity for cross-examination ...." (*In re Gault, supra,* at 57.)

6. Record of proceeding. See *Specht v. Patterson, supra,* at 610.

B. Those essential elements of Due Process are retroactive. "If the rule or newly established standard goes to the very integrity of the fact finding process by which liberty is taken—as where the accused was convicted without benefit of counsel,...retroactivity should be accorded even though it may result in wholesale consideration of the standards by which factual determinations were made." *Heryford v. Parker,* 396 F.2d 393, 296-7

(10th Cir. 1968), at pp. 396-7.) See *Gideon v. Wainwright*, 372 U.S. 335, and *Griffin v. State of Illinois*, 351 U.S. 12.)

C. A collateral legal consequence is being imposed-on the basis of the unconstitutional hospitalization in 1956.

The unconstitutionality of said hospitalization in 1956 is not moot, because appellant's practice of his profession is at issue.

> [A] case is moot only if it is shown that there is no possibility that any collateral legal consequence will be imposed on the basis of the challenged [commitment].... *In re Ballay*, 482 F.2d 648 (1973) at 651, applying to a civil issue the case of *Sibron v. New York*, 392 U.S. 40, 57.

D. On the issue of appellant's unconstitutional hospitalization in 1956, Sec. 70(5) of the New York Mental Hygiene Law protects the appellant in his application to practice his profession

Said sec. 70(5) even protects applicants who are presently hospitalized "by voluntary or informal admission" without a judicial determination of incompetency. (*Infra*, B-4.)

A fortiori, said section protects an applicant from an unconstitutional hospitalization lacking all essential elements of Due Process 20 years ago in 1956.

Therefore the legislature of the State of New York in 1965, and this Court in 1967, each created the same rule of law covering the instant case.

SECOND REASON: THE NEW YORK STATUTE AUTHORIZES A DISCRETIONARY COVER-UP BY CONCEALMENT OF SAID SECRET 1956 RECORD OF ANY PROCEEDINGS AND RELEVANT RECORDS

In 1957, in *Farnum v. New York State, etc., supra*, the defendant claimed the authority of the New York statutes on two grounds, for concealing said 1956 secret record:

1. The Mental Hygiene Law, Vol. 34-A, Chapter 27, Art. 2 sec. 20, and Art. 3 secs. 34(9) and 34(16). Said statute is substantially identical in 1951 and 1971 (*infra*, B-2 and 3.) Said statute therefore is repugnant to the Due Process Clause of the Fourteenth Amendment for covering-up the lack of the essential elements of Due Process in appellant's 1956 hospitalization.

2. The defendant claimed that the privilege of confidentiality in the doctor-patient relationship was for the benefit of the doctor. Affidavit Oct. 9, 1957, pp. 1-2; in Petition, Appendix B-4. Said statute *infra*, B-1 and B-2.

In said 1957 case the appellant challenged the Constitutionality of said New York statutes for violating the Due Process and Equal Protection Clauses of the Fourteenth Amendment, as follows:

> Under the United States Constitution, can the defendant, the New York State Department of Mental Health by [secret] allegations detain the plaintiff involuntarily for an indeterminate period of time including lifetime, such allegations presumably including a day-to-day record of alleged mental illness which thereafter exists as a permanent, written cloud upon the plaintiff's life, liberty and property; and can the defendant thereupon withhold that record from the plaintiff on the claim that it is confidential? ([secret] added)
> (*Farnum v. New York State etc., supra*, Memorandum of Law, "The Question," Plaintiff's Motion for Three-Judge Court, p.1. Set forth in Petition, B-5.)

THIRD REASON: APPELLANT'S UNCONDITIONAL DISCHARGE FROM THE HOSPITAL JULY 25, 1957 ESTABLISHED AT THAT TIME THE PRESUMPTION OF COMPETENCY.

The imposition of any secret condition or evaluation would make said moment of discharge a critical point at which the essential elements of Due Process under the Fourteenth Amendment would attach.

Otherwise the presumption of sanity in Anglo-American law is lost.

FOURTH REASON: SAID 1956 HOSPITALIZATION IS UNREASONABLY REMOTE IN 1976 FOR ANY INFERENCE OF PRESENT INCOMPETENCY

In determining a reasonable standard, the State of Maine does not even request disclosure of hospitalization at a time more remote than 3 years. (Maine Bar application form, Petition, Exhibit L.)

If three years is a reasonable maximum period of relevance (as in Maine), eighteen years is unreasonable.

FIFTH REASON: ANY CONCEALED EVALUATION OF APPELLANT'S COMPETENCY IN 1973 LACKING EACH AND ALL ESSENTIAL ELEMENTS OF DUE PROCESS VIOLATES THE FOURTEENTH AMENDMENT

The appellee at twenty-four points in said first interview October 1, 1973, demanded authority to examine said secret hospital record as to the reason that appellant was hospitalized to determine if there was any misconduct, and as to the date of discharge. (Tr. I; appellee's letter to the County Clerk October 2, 1973, in record on appeal.)

Appellant's letter to said Hospital November 23, 1973, specifically stated its subject matter as "hospital record in 1956...." (para. 2.) Appellant's release from responsibility, was limited to "the Hospital and all employees thereof...." (*Ibid.*, para. 3.) Therefore appellant released no Constitutional rights, his release from responsibility extended only to the hospital, and the hospital record was limited to the period of hospitalization.

Appellant never was notified of appellee's letter to said hospital October 2, 1973, requesting an evaluation 16 years afterwards of appellant's competency at the moment of final discharge in July, 1957, and a further evaluation of his competency after discharge based solely on said secret hospital record before discharge.

Appellee's said secret request for said evaluation therefore violated the Due Process Clause of the Fourteenth Amendment for the reasons set forth in Reasons 1 and 2 *supra*.

SIXTH REASON. ANY USE OF SAID SECRET 1956 RECORD AS EVIDENCE ON APPELLANT'S COMPETENCY IN 1973 ALSO VIOLATES THE DUE PROCESS CLAUSE

SEVENTH REASON. ANY DEMAND TO PERMIT USE OF SAID SECRET 1956 RECORD IN A PSYCHIATRIC EXAMINATION NOW IS REPUGNANT TO THE DUE PROCESS CLAUSE

Said fifth and sixth actions are repugnant to the Due Process Clause of the Fourteenth Amendment for each of the reasons set forth in Reasons 1 thru 5.

II. Appellee's characterization of appellant's exercise of his right to petition his government violates the First Amendment made applicable to the State by the Privileges and Immunities Clause of the Fourteenth Amendment

Appellee's characterization of appellant's advocacy of the Constitutional issues herein as "neurotic—in fact psychotic," was done only after appellant filed his Article 78 proceeding in the Appellate Division on October 2, 1974. (*Supra*, Statement of the Case, point 3.)

The freedoms secured to an individual by the First Amendment, including his right to petition his government, are applied to the States by the Fourteenth Amendment. (*Cox v. State of Louisiana*,

379 U.S. 536 at page 552 (1965), freedom-of speech and assembly; *Cox v. New Hampshire*, 312 U.S. 569 (1941); *Hague v. C.I.O.*, 307 U.S. 496 (1939).

Said freedoms include the right peaceably to assemble, and to petition the government. (See Frederick Ludwig, *The New Criminal Procedure Law*, N.Y.: The Equal Justice Institute, 1971, p.8; and *State v. Barlow*, 153 P.2d 647, 107 Utah 292 (1944).

"...The First and Fourteenth Amendments...have the force of law. If...state statutes, or administrative actions conflict with these limitations, they must yield...." (*Brooks v. Auburn University*, 296 F.Supp. 188, D.D. Ala., 1969.)

Said First [and Fourteenth] Amendments protect the right to petition on Constitutional and State issues, and for personal grievances. (*Palmigiano v. Travisono*, 317 F. Supp. 776, D.C.R.I., 1970.; *Liberty Lobby, Inc. v. Pearson*, 390 F.2d 489 (1968), 129 U.S.App.D.C. 74.)

Therefore, under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, an issue of competency can be submitted to a court only on probable cause, in conformity with the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

Appellee presents only two suggestions for said probable cause: appellant's hospitalization 20 years ago in 1956, and appellant's exercise of his right under the Fourteenth Amendment to Petition His Government in this appeal.

Said 1956 hospitalization is not said probable cause, for Reasons 1 thru 7 set forth *supra*.

Appellant's right to petition his government is protected by the Right to Petition Clause of the First Amendment, made applicable to the States by the Privileges and Immunities Clause of the Fourteenth Amendment.

III. APPELLEE HAS DECLINED TO USE AS A BASIS FOR ITS ACTION A COMPLETE PSYCHIATRIC EVALUATION BY APPELLANT'S EMPLOYER, THE CITY OF NEW YORK, ON FEBRUARY 17, 1976. SAID CITY INITIATED APPELLANT'S HOSPITALIZATION IN 1956. (*Infra*, A-1 and A-2.)

A. Appellant offered said evaluation to the appellee on February 28, 1976 before the results were known. Appellee declines to receive said 1976 favorable evaluation on said issue of probable cause before a Court. (*Infra*, A-2.)

B. Appellee similarly declines to receive said favorable 1976 evaluation on the issue of presumption of competency. (*Ibid.*)

C. Appellee similarly declines to receive said favorable 1976 evaluation as the basis for reconsideration by the Appellee of their demand for a psychiatric examination using said secret 1956 hospital record. (*Ibid.*)

D. Appellee admits the relevance of said favorable 1976 evaluation by demanding it for use in a psychiatric examination based on said secret 1956 record; and

E. Appellee demands appointment of a psychiatrist by the Court of the Appellate Division, First Department for said examination based on said secret 1956 record. Said Court has issued a final ruling that United States Constitutional issues are irrelevant in this case. (See Jurisdiction, *supra*.)

For the Constitutional reasons set forth *supra*, appellant respectfully urges that no psychiatric examination be required by the appellee, and that no probable cause is found for a competency hearing before a Court.

Appellant further respectfully urges that the New York State Department of Mental Hygiene be

instructed that any record of any proceeding on involuntary commitment of the appellant during the period of his hospitalization from December 13, 1955 to February 15, 1957, and thru his final discharge July 25, 1957, be expunged.

CONCLUSION

For the Foregoing Reasons, Probable Jurisdiction Should Be noted.

Respectfully submitted,

Henry Merritt Farnum

Henry Merritt Farnum
Appellant, *pro se*

Executive House
225 E. 46 Street
New York, N.Y. 10017

THE CITY OF NEW YORK - DEPARTMENT OF PERSONNEL
220 Church Street - New York, N Y 10013

NOTICE OF PERSONNEL DIRECTOR ACTION

P S ITEM NO	DATE
76-1263	4.12.76
POSITION: College Office Assistant #3010 List #144,	

Mr. Henry Farnum
Executive House
225 East 46th Street
New York, N. Y. 10017

The Personnel Director has taken the action checked below in connection with your qualification for the above mentioned position. If you have been found **NOT QUALIFIED** and you have already been appointed, your department has been requested to terminate your employment

medically (After Psychiatric Evaluation)

☑ 1 Marked you **QUALIFIED** ~~MEDICALLY~~

☐ 2 **GRANTED** your claim for veteran preference credits

☐ 3 **GRANTED** your claim for disabled veteran preference credits

☐ 4 **GRANTED** your claim for veteran preference credits but **DENIED** your claim for disabled veteran preference credits for the reason shown below

☐ 5 **DENIED** your claim for veteran preference credits and for disabled veteran preference credits for the reason shown below

☐ 6 **DENIED** your claim for veteran preference credits for the reason shown below

— Marked you **NOT QUALIFIED** for

☐ 7 Failure to meet educational requirements

☐ 8 Failure to meet experience requirements

☐ 9 Failure to meet medical requirements

☐ 10 Failure to meet citizenship requirements

☐ 11 Failure to meet age requirements

☐ 12 Failure to meet residence requirements

☐ 13

REASON FOR DENIAL OF VETERAN PREFERENCE OR DISABLED VETERAN PREFERENCE CREDITS

The decisions of the Personnel Director, under Items 4 through 13, above, may be appealed in writing to the City Civil Service Commission, at the address shown above, within thirty (30) days of the date of this notification. However, no appeal from a medical disqualification will be considered unless it is accompanied by supporting medical evidence which disagrees with the determination of the examining physician

NOTE RE ITEMS 14 THROUGH 19

If you have been marked **not qualified** for any of the reasons mentioned in Items 14 through 19, you may not appeal to the City Civil Service Commission. However, if and when you correct the reason for your disqualification, you may request reconsideration by writing to the Director of Investigation at the above address, forwarding any evidence which may be pertinent. **Do Not Telephone.** The Personnel Director will then reconsider your case, provided the list upon which your name appears is still in existence

— Marked you **NOT QUALIFIED** (See Note to the left)

☐ 14 Because investigation was discontinued at your request

☐ 15 For failure to appear for interview as requested on

☐ 16 For failure to appear for medical examination

☐ 17 For failure to appear for, or to cooperate in, the completion of investigation

☐ 18 For failure to reply to Form DP-484 A (Request for Supplementary Information)

☐ 19 For

FOR THE CITY PERSONNEL DIRECTOR

C. R. Foy Jr.

Deputy Personnel Director
C. R. FOY, JR.

DP-5A-500-1200333(75)

A-2 a

Supreme Court, Appellate Division
First Judicial Department

Office of Committee on Character and Fitness

ROBERT E. KEEGAN, SECRETARY

41 MADISON AVENUE, NEW YORK, N.Y. 10010
683-7746

March 2, 1976

Mr. Henry Merritt Farnum
Executive House
225 East 46th Street
New York, N.Y. 10017

Dear Mr. Farnum:

I acknowledge receipt of your letter of February 28. I do not feel that your recent psychiatric interview alters the situation with regard to your application for admission.

As it has stood since September, 1974, the Committee has deferred your application for admission until you consent to an examination and report by a Court-appointed psychiatrist in aid of the Committee in considering your application.

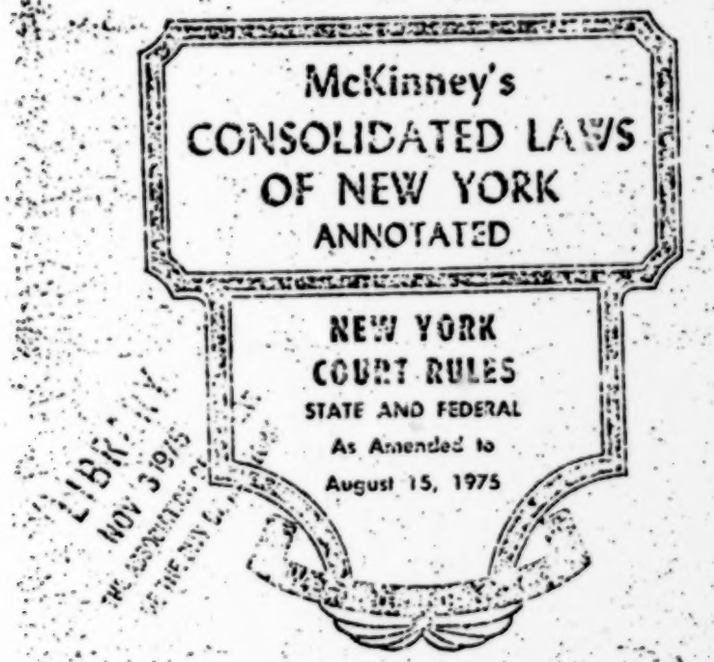
A-2 b

Should you consent to appear before a Court-appointed psychiatrist, I feel that you should supply him with the results of your recent appearance before another psychiatrist in connection with your employment by the City of New York.

Very truly yours,

R. Keegan

REK:lrs



[Supersedes 1974 Pamphlet]

1. Court of Appeals
2. Four Appellate Divisions
3. Two Appellate Terms
4. Supreme Court — All Counties
5. Court of Claims
6. Family Court
7. Family Court Within the City of New York
8. New York City Civil Court
9. New York City Criminal Court
10. Uniform Rules for City Courts in Second, Third, and Fourth Departments
11. Nassau County District Court
12. Suffolk County District Court
13. United States Court of Appeals, Second Circuit
14. United States District Courts in New York

IN THE SUPREME COURT OF THE STATE OF NEW YORK,
APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT

Henry Merritt Farnum, Applicant for Admission to the Bar of the State of New York, Appellant-Petitioner	1372 (M-2347)
vs.	
Committee on Character and Fitness, Supreme Court of the State of New York, Appellate Division, First Judicial Dept. Respondent	

NOTICE OF APPEAL
AND
APPLICATION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Henry Merritt Farnum, the appellant-petitioner above named ("appellant"), hereby appeals to the Supreme Court of the United States from the final decision of the Court of Appeals of the State of New York entered in this proceeding February 12, 1976, denying appellant's motion to vacate said Court's order December 22, 1975 dismissing appellant's appeal.

This appeal is taken pursuant to 28 U.S.C. sec. 1257(2).

Notice is hereby given that the appellant further applies to the Supreme Court of the United States for a writ of certiorari as to such issues as to which said appeal is inapplicable.

This application for a writ of certiorari is taken pursuant to 28 U.S.C. sec. 1257(3).

Respectfully,
Henry Merritt Farnum
Appellant-petitioner, pro se

Executive House
225 E. 46 Street, N.Y., N.Y. 10017
Days: (212) 489-3594

Dated February 16, 1976

A copy of this Notice of Appeal and Application for Writ of Certiorari was mailed on February 16, 1976, to:
Hon. Robert Keegan, Secretary, Office of the Committee on Character and Fitness, 41 Madison Avenue, 2nd floor, New York, New York 10010;
Hon. Louis J. Lefkowitz, Attorney-General of the State of New York, Attn. Daniel M. Cohen, Esq., Assistant Attorney General, State of New York Department of Law, Two World Trade Center, New York, N.Y. 10047; and
Mr. David F. Dabinett, Director of Personnel, John Jay College of Criminal Justice, The City University of New York, 444 West 56th Street, New York, N.Y. 10019

76-5103

IN THE SUPREME COURT OF THE STATE OF NEW YORK,
APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT

Henry Merritt Farnum,
Applicant for Admission to the Bar
of the State of New York,
Appellant-Petitioner

1372
[M-2347]

vs.

Committee on Character and Fitness,
Supreme Court of the State of New York,
Appellate Division, First Judicial Dept.
Respondent

February 17, 1976

Please file this decision dated February 12, 1976, with the Notice of Appeal and Application for Writ of Certiorari to the Supreme Court of the United States dated February 16, 1976, filed under separate cover, which refers to this decision.

Respectfully,
Henry Merritt Farnum
Appellant-petitioner, pro se

Executive House
225 E. 46 Street, N.Y., N.Y. 10017
Days (212) 489-3594

A copy of this Exhibit 1
was mailed on February 17, 1976 to:
Hon. Robert Keegan, Secretary, Office of the Committee on Character and Fitness, 41 Madison Avenue, 2nd floor, New York, New York 10010;
Hon. Louis J. Lefkowitz, Attorney-General of the State of New York, Attn. Daniel M. Cohen, Esq., Assistant Attorney General, State of New York Department of Law, Two World Trade Center, New York, N.Y. 10047; and
Mr. David F. Dabinett, Director of Personnel, John Jay College of Criminal Justice, The City University of New York, 444 West 56th Street, New York, N.Y. 10019.

COURT OF APPEALS FEB 19 1976

1 No. [illegible] 81
Henry Merritt Farnum, Applicant for Admission to the Bar of the State of New York,
Appellant,
vs.
Committee on Character and Fitness, Supreme Court of the State of New York, Appellate Division, First Judicial Department,
Respondent.

Motion to vacate this Court's order dated December 22, 1975 dismissing the appeal herein denied.

APPENDIX B

PERTINENT PROVISIONS OF UNITED STATES CONSTITUTION, AND OF STATUTES

UNITED STATES CONSTITUTION

AMENDMENT I

Congress shall make no law...abridging...the right of the people...to petition the Government for a redress of grievances.

AMENDMENT XIV

Section 1. ...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES

New York State

Consolidated Laws, provisions the same in 1956 and 1975

1951 Civil Practice Act, Section 352 (now *Consolidated Laws*, 1971, CPLR, Section 4504(a))

[This statute is set forth because the State cited it in 1957 as the second of two statutory authorities for

concealing the 1956 hospital record from the appellant as confidential.]

Section 352. Physician, dentist and nurse.

(a) Confidential information privileged. Unless the patient waives the privilege, a person authorized to practice medicine or dentristry, or a registered professional or licensed practical nurse, shall not be allowed to disclose any information which he acquired in attending a patient in a professional capacity, and which was necessary to enable him to act in that capacity.

(*Consolidated Laws*, 1951, Mental Hygiene Law; and *Consolidated Laws*, 1971, Mental Hygiene Law)

Vol. 34-A, Chapter 27, Mental Hygiene Law

Article 2

Section 20. Record of patients and inmates.

The department of mental hygiene shall keep in its office, and accessible only to the commissioner, medical director and such other officers and subordinates of the department as the commissioner may designate, except by the consent of the commissioner or an order of a judge of a court of record, a record of each patient admitted to an institution within the department..., and also the records, papers and reports of examination of others made by any division or bureau of the department....

Article 3

Section 34. Powers and duties of director.

9. Keep a record, in which he shall cause to be entered at the time of reception of any patient, his name, residence and occupation, and the date of such reception, by whom brought and by what authority and on whose petition certified or received, and an abstract of all orders, warrants, requests, petitions, certificates and other papers accompanying such persons.

The director within three days after the reception of a patient, shall make, or cause to be made a descriptive record of such case. He shall also make or cause to be made entries from time to time of the mental state, bodily condition and medical treatment of such patient during the time such patient remains under his care, and in the event of discharge or death of such person, he shall state in such record the circumstances thereof, and make such other entries at such intervals of time and in such form as may be required by the commissioner. *Such record shall be accessible only to the director and such officers and subordinates of the institution as he may designate and to the commissioner and his representatives,* except on the consent of the commissioner or an order of a judge of a court of record....* [Emphasis added.]

*Amendment in *Consolidated Laws*, 1971: "...and the mental health review service,...."

16. ...

The director shall cause a complete clinical record to be made of each patient, to be kept in such form and to comprise such matters as the commissioner may direct.

Consolidated Laws, provision enacted since 1956

Mental Hygiene Law

Section 70. Admission procedure; general requirements

5. Notwithstanding any other provision of law to the contrary no person admitted to a hospital *by voluntary or informal admission* shall be deprived of any civil right solely by reason of such admission, nor shall such admission modify or vary any civil right of any such person, *including but not limited to civil service ranking and appointment or rights relating to the granting, forfeiture or denial of a license, permit, privilege* or benefit pursuant to any law. [Emphasis added.]

[Subdivision 5 added L. 1964, c. 738, Sec. 3, eff. Sept. 1, 1965.]

Consolidated Laws, provisions repealed since 1956

Mental Hygiene Law,

Article 5

Section 74. Admission on court certification

1. A person alleged to be mentally ill...may be certified to and confined in an institution for the care and treatment of the mentally ill, upon an order made by a judge of a court of record of the city or county, or a justice of the supreme court of the judicial district in which the alleged mentally ill person resides or may be, *upon a certificate made by two certified examiners*, accompanied by a verified petition therefor, *or* upon such certificate and petition, *after a hearing*, as provided in this section. [Emphasis added.]

...

3. *Except as hereinafter provided*, notice of such application shall be served personally, at least one day before making such application, upon the person alleged to be mentally ill. *Notwithstanding the foregoing provision*, if the

judge to whom application is made, be satisfied from any statement contained in the papers in the proceeding, or from inquiry, that personal service of the notice on the alleged mentally ill person would be ineffective or detrimental to such person, he may, in his discretion, dispense therewith, and *he shall dispense therewith, if the certified examiners state in writing, under oath*, that personal service upon the alleged mentally ill person would, *in their opinion*, be detrimental to such person.... [Emphasis added.]

...

7. ...Upon the filing of such certificate, the order theretofore made by the judge shall become a final order and *such person shall thereafter remain in such institution, or any other institution to which he may be transferred, until his discharge in accordance with the provision of this chapter*. [Emphasis added.]

[Former section 74 repealed L. 1964, c. 738, sec. 5.]

APPENDIX C

OPINIONS BELOW

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on October 31, 1974.

Present—Hon. Arthur Markewich, Justice Presiding,
Theodore R. Kupferman,
Aron Steuer,
Louis J. Capozzoli,
Myles J. Lane, Justices.

Henry Merritt Farnum, Applicant for Admission to the Bar of the State of New York,

Petitioner,

-against-

Committee on Character and Fitness, Supreme Court of the State of New York, First Judicial Department,

Respondent.

1372
[M-2347]

The above-named petitioner having presented a notice of petition to this Court praying for an order, pursuant to Article 78 of the Civil Practice Law and Rules, in the nature of a writ of prohibition,

Now, upon reading and filing the notice of application, with proof of due service thereof, and the petition of Henry Merritt Farnum, verified October 1, 1974, and the exhibits annexed thereto, and the reply of Henry Merritt Farnum, verified October 22, 1974, all read in support of the application, and the affidavit of Lowell Wadmond, sworn to October 17, 1974, in opposition thereto, and after hearing Mr. Henry Merritt Farnum, pro se, for the application, and Mr. Lowell Wadmond opposed, and due deliberation having been had thereon,

C-1a

It is unanimously ordered that the application be and the same hereby is denied, and the petition dismissed, without costs and without disbursements.

ENTER:

[illegible] W. GAMSO

Clerk.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on December 3, 1974

Present—Hon. Arthur Markewich, Justice Presiding,
Theodore R. Kupferman,
Aron Steuer,
Louis J. Capozzoli,
Myles J. Lane, Justices.

Henry Merritt Farnum, Applicant for Admission to the Bar of the State of New York,

Petitioner,

-against-

Committee on Character and Fitness, Supreme Court of the State of New York, First Judicial Department,

Respondent.

M-2671

C-2 a

An order of this Court having been made and entered on October 31, 1974, denying petitioner's application for an order, pursuant to Article 78 of the Civil Practice Law and Rules, in the nature of a writ of prohibition, and dismissing the petition,

And petitioner having moved for a stay of said order of this Court entered on October 31, 1974, pending final determination of petitioner's appeal to the Court of Appeals,

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the affidavit of Henry Merritt Farnum in support of said motion, and after hearing Mr. Henry Merritt Farnum for the motion and no one appearing in opposition thereto,

It is ordered that said motion be and the same hereby is denied.

ENTER:

JOSEPH J. LUCCHI
DEPUTY
Clerk.

C-2 a

APPELLATE DIVISION-SUPREME COURT-FIRST DEPT
STATE OF NEW YORK
I, HYMAN W. GAMSO, Clerk of the Appellate Division of the First Judicial Department, do hereby certify that I have compared the original thereof filed in said office on DEC 3 1974 with the same is a correct transcript thereof, and of the whole of the IN WITNESS WHEREOF I have hereunto set my hand of this Court on DEC 3 1974

C-2

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on January 21, 1975.

Present—Hon. Arthur Markewich, Justice Presiding,
Theodore R. Kupferman,

Louis J. Capozzoli,
Myles J. Lane, Justices.

In the Matter of

Henry Merritt Farnum, Applicant for Admission to the Bar of the State of New York,

Petitioner,

-against-

Committee on Character and Fitness, Supreme Court of the State of New York, First Judicial Department,

Respondent.

M-2937

The above-named petitioner having moved for leave to reargue his application for an order, pursuant to Article 78 of the Civil Practice Law and Rules, in the nature of a writ of prohibition, which application was denied and the petition dismissed by order of this Court entered on October 31, 1974,

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the affidavits of Henry Merritt Farnum in support of said motion, and after hearing Mr. Henry Merritt Farnum, pro se, for the motion, and no one appearing in opposition thereto,

It is ordered that said motion be and the same hereby denied.

ENTER:

William W. ...
Clerk.

C-3 b

JAN 21 1975

JAN 21 1975

C-3

State of New York,
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the twenty-second *day of* December *A. D. 19*75

Present, HON. CHARLES D. BREITEL, *Chief Judge, presiding.*

Henry Merritt Farnum, Applicant for Admission to the Bar of the State of New York,

Appellant,

vs.

Committee on Character and Fitness, Supreme Court of the State of New York, First Judicial Department,

Respondent.

In accord with the Rules of Practice of this Court (22 NYCRR 509.6[a]), the above appeal not having been argued or submitted within nine months after it was taken, it is

ORDERED, that the appeal be and the same hereby is dismissed.

Joseph W. Bellacosa
Clerk of the Court

C-4 b

1 Mo. No. 81

Henry Merritt Farnum, Applicant for Admission to the Bar of the State of New York,

Appellant,

vs.

Committee on Character and Fitness, Supreme Court of the State of New York, Appellate Division, First Judicial Department,

Respondent.

COURT OF APPEALS FEB 12 1976

Motion to vacate this Court's order dated December 22, 1975 dismissing the appeal herein denied.

IN THE

United States Supreme Court

OCTOBER TERM, 1975

No. 75-1649

HENRY MERRITT FARNUM, Applicant for Admission to the Bar of the State of New York,

Appellant,

against

COMMITTEE ON CHARACTER AND FITNESS, Supreme Court of the State of New York, Appellate Division, First Judicial Department,

Appellee.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION TO DISMISS

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for the Appellee
Office & P. O. Address
Two World Trade Center
New York, New York 10047
Tel. (212) 488-3446

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

DANIEL M. COHEN
Assistant Attorney General
of Counsel

IN THE

United States Supreme Court

OCTOBER TERM, 1975

No. 75-1649

HENRY MERRITT FARNUM, Applicant for Admission to the Bar of the State of New York,

Appellant,

against

COMMITTEE ON CHARACTER AND FITNESS, Supreme Court of the State of New York, Appellate Division, First Judicial Department,

Appellee.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION TO DISMISS

The Committee on Character and Fitness of the Supreme Court of the State of New York, Appellate Division, First Department, moves to dismiss the appeal taken by the petitioner from an order of the New York Court of Appeals, entered on December 22, 1975. The New York Court dismissed petitioner's appeal to that Court, by reason of his failure to prosecute that appeal within nine months after it had been taken (C-46).

Petitioner Fails to Present a Substantial Federal Question

It is clear from the order of the New York Court of Appeals (C-46) that it passed upon no federal question, constitutional or otherwise. Petitioner had failed to comply with the New York Court of Appeals rule governing its calendar practice. Nor does it appear that even the Appellate Division, First Department, found it necessary to pass upon any federal question (C-1).

CONCLUSION

Since the petition shows no justification for invoking the jurisdiction of this Court, his appeal should be dismissed.

Dated: New York, New York, May 26, 1976.

Louis J. Lefkowitz
Attorney General of the
State of New York
Attorney for the Appellee
Office & P. O. Address
Two World Trade Center
New York, New York 10047

Tel. (212) 488-3446

Samuel A. Hirshowitz
First Assistant Attorney General

Daniel M. Cohen
Assistant Attorney General
of Counsel

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-1649

Henry Merritt Farnum
Applicant for Admission to the Bar
of the State of New York
Appellant

v.

Committee on Character and Fitness
Supreme Court of the State of New York
Appellate Division, First Judicial Department
Appellee

APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

APPELLANT'S
SUPPLEMENTAL BRIEF, JUNE 14, 1976, AND
REPLY BRIEF TO MOTION TO DISMISS

Henry Merritt Farnum
Appellant, *pro se*

Executive House
225 E. 46 Street
New York, N.Y., 10017

TABLE OF CONTENTS

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-1649

Henry Merritt Farnum,
Appellant

v.

Committee on Character and Fitness
Supreme Court of the State of New York,
Appellate Division, First Judicial Department
Appellee

On Appeal from
The Court of Appeals, State of New York

APPELLANT'S SUPPLEMENTAL BRIEF, JUNE 14, 1976

Edited version of address by J. Kenneth Campbell, Esq., released for quotation on May 21, 1976 by his letter to the appellant.

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

SYMPOSIUM

CURRENT ISSUES WITH REGARD TO THE MENTALLY DISABLED AND THE LAW

House of the Association, Meeting Hall
September 29, 1975, 7:30 p.m.

THE BACKGROUND OF THE NEW YORK LEGAL FRAMEWORK

J. KENNETH CAMPBELL
Member, New York Bar

INTRODUCED BY PRESIDING OFFICER

...As some of you may know, the Bar Association took the lead a number of years ago in developing new areas and new principles in dealing with the problems of the mentally ill, and especially in regard to the hospitalization and discharge of mental patients. [Association of the Bar of the City of New York, *Special Committee to Study Commitment Procedures*, Mental Illness and Due Process: *Report and Recommendations on Admission to Mental Hospitals Under New York Law* (In cooperation with the Cornell Law School. Ithaca, N.Y.: Cornell University Press, 1962, 303 pp.)] Subsequently the Committee went forward with another study in the area of the criminal defendant and other persons in the criminal justice system who became mentally ill. That study too was a pioneering book--the report was published as a book. It laid the groundwork for legislation and for important judicial decisions, some of which I would like to comment on, later on in the evening.

The work of the lawyers ... is an ongoing process ... as a small contribution to the work that every community must do to keep current.

So it is a very great pleasure for me to present to you Mr. J. Kenneth Campbell.

J. KENNETH CAMPBELL, ESQ.

Thank you, Simon. As the man said, "enough is enough already." So let's get down to business.

My assignment this evening is among the easiest of any on the panel. The panel is here to discuss current developments. I am here to bring you up-to-date on how we got to be where we are. Strange as it may seem, it has only taken the last ten years to get us where we are.

Ten years ago...we're not celebrating a Bicentennial--let's say, a "ten-Centennial." Ten years ago the law in this State was by modern standards so archaic that, as I describe it to

you, you will, I think, find it hard to believe. And yet today in that short ten years we are, as Simon has said, among the most progressive states in the union in the area of the rights of the mentally ill and the mentally retarded.

Now, I have no funny stories. I am going to get right down to the heart. I am going to start you off with a true-false quiz.

Take yourself back to, let us say, August 31, 1965, approximately ten years ago. I will put to you some questions as to what could have happened to you--anyone here this evening--under the law as it then prevailed. Let's start with question number one.

You--any one of you--could, in August of 1965, have been labeled as a psychotic by two physicians, not psychiatrists, found to be such by a Supreme Court justice on papers read by him in chambers, sent to a State hospital, held against your will without ever receiving notice of the charges against you, without any right to counsel, without any opportunity to confront or to cross-examine your accusers, or ever receiving any hearing whatever. True, or false?

True. Under the law as it stood in this State prior to the major amendments made effective September 1, 1965, we had this wonderful-looking statute on the books, which said that no person could be committed to a mental hospital unless he was given notice of the charge, had a hearing before a judge, indeed had a right to a jury trial if he disagreed with the judge's conclusion. But, in the fine print, should the certifying physician find that it would be detrimental to the patient to give him notice of the charges against him, the hearing mandatorily had to be dispensed with. [*For said statute see the Jurisdictional Statement in the instant case ("J.S."), Appendix B-4, B-5, "provisions repealed since 1956." See appellant's*

First and Second Reasons (J.S., pp. 19-23); and Fifth thru Seventh Reasons (J.S., pp. 24-26). Said Reasons are basic to the Third and Fourth Reasons (J.S., pp. 23-24).]

The result was that, except in downstate New York to which I will later advert, there were in that year as I said before literally thousands of people being committed involuntarily without ever even knowing that they had a right to a hearing, a right to a jury trial, a right to a lawyer, a right to cross-examine, and all the rest of it.

Let's try another. If so hospitalized, under such an order as I just described against your will, you could be kept in the hospital indefinitely even until your old age or unto your grave, without any further judicial action beyond the order signed in chambers which I just described--without any opportunity for a hearing, cross-examination, etc.--on the mere filing of a certificate by the hospital director to the effect that you were, indeed, mentally ill. This certificate, under my hypothetical, would simply be filed with the appropriate County Clerk in whatever part of the State. Again you know that the answer to my "true and false" is: True. That's the way it then worked. [*J.S., Appen. B-5, para. 7.*]

Now, here in downstate New York, things were a little different by virtue of the individual action of our justices of the Supreme Court here in Manhattan, Brooklyn, the Bronx. Here indeed you were accorded the right to a hearing. [Not in the instant case. J.S., p. 23, *Farnum v. New York State*, "The Question;" and J.S., pp. 19-23, First and Second Reasons.] In those days Bellevue was--forgive me, Dr. Zitrin--the assembly line, the conveyor belt, through which these patients went on their way to the State hospitals. The right to a hearing consisted of being brought into a courtroom in the hospital, usually in your pajamas and bathrobe, where you confronted a Supreme Court

Judge in his robes, and one or more hospital psychiatrists who gave out with what, certainly to the patient, must have seemed like jargoneze--"This patient is disassociated, delusional, and demonstrating schizophrenic tendencies...."

The Judge would say, "Yes. And what do you have to say, Mr. Patient?"

"What did he say? What did he say?"

That was the hearing. It was skeletal, by its very nature. Again, counsel were virtually unknown in such hearings. And the courts, God bless them, had nothing to go on except the inarticulate responses of the patient, and the professional pronouncements of the psychiatrist.

....

...Until the decision of the U.S. Supreme Court in <u>Baxstrom v. Herold</u> in 1966.

Now, all of that was ten years ago. All of that is grossly changed over this ten year period....

...in reference to my former work on the Legal Aid Committee of this Association, in the late '50s, early '60s, this Association was being inundated with letters from mental patients...throughout the State....

And these letters by routine came into the Committee on Legal Aid of the Association, and eventually there the realization grew that there was a problem out there...a special committee of this Association was organized to create what became the Committee on the Study of Commitment Procedures and the Law Relating to Incompetents. We had a paid staff. We had doctors on the committee, lawyers on the committee, judges on the committee, and above all the Commissioner of Mental Hygiene on the committee....

In any event, this committee set to work, and its trials and tribulations within the committee-room were most extensive. Visualize what we were facing. We were facing on one hand, lawyers saying, "We must have due process of law. We cannot put these people away without a hearing. We must

have the right to cross-examination," etc., etc. On the other hand, from the other side of the table we were hearing from the doctors, "You are meddlers. You are interfering with medical judgments. You have no competence to tell a physician who is in need of hospitalization, and who is not." And so the lines were very strongly drawn, very early on.

In the end, that committee publishing its report in 1962 tried to find the best balance between the views of the physicians on the one hand, and the views of the lawyers on the other. What we came to was a system that works about like this.

Let's eliminate the mandatory, court-ordered admission that I described to you earlier. Let's go into a system of medical admission into the hospital, on nothing more than the certificate of two physicians to the effect that the person is mentally ill. But immediately inform that patient that he has a right to a hearing, and that he has a right to assistance, and that he can demand a hearing. Simultaneously, let us create and put into operation a wholly new agency never tried before anywhere in the country, and I believe to this date, ten years after enactment of our statute, there is still nothing quite like it anywhere in the land. Let us create what we will call the Mental Health Information Service, as an arm of the court. Let us put representatives of the court into each mental hospital in the State. Let the patients have contact with those representatives of the court. Let those representatives of the court look into the case of every patient involuntarily detained, and where a hearing is demanded or held let that Service assemble the facts and compile the data to make a report on which the court can make an informed judgment, instead of this skeletal type of hearing to which I referred earlier.

Moreover, once the patient is in, let us not permit this situation where he can go to the back

wards of the hospital and stay there forever.... We proposed what came to be known as periodic judicial review....

I want to tell you what an educational experience it was for me to bring that proposal from the pages of a book, to enactment of a law which became law in 1965. It was done principally through the splendid legislative efforts of a Senator named Metcalfe, who literally brought the doctors, the lawyers, and the judges into the same room, banged the table, banged their heads, and demanded agreement on point after point after point. In the end when it was enacted, as indeed it was in 1965, it had the support of virtually every interested group throughout the State, both on the medical and the legal side.

So, having done that much and having felt wonderfully enthusiastic about our great achievements, we then turned with this Committee to the criminal side dealing with those defendants who had either been convicted on the one hand, and who had not been convicted on the other hand, and we set out to do a study of those. While we were in the midst of the study, which was not completed and published until 1967, the ground was changing under our feet so quickly that we could scarcely keep up with the developments in the courts.

What happened was that a wave had come along, had come out of the ocean and onto the beach. Not only were groups such as ours working in this area, but the courts were beginning to rise up and say, "No, you can't do it this way. You must have due process. You must give these people the rights to which they were entitled. The status of mental patients, be he prisoner or nonprisoner, does not change a man's Constitutional rights." So there was flood of these cases during the '60s and the early '70s....

...This whole trend on the part of the lawyers has been one to put the determination in the hands of the judiciary--the final determination....

COMMITTEE

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Supreme Court, Appellate Division
First Judicial Department

Office of Committee on Character and Fitness

ROBERT E. KEEGAN, Secretary

41 MADISON AVENUE, NEW YORK, N.Y. 10010
683-7740

June 10, 1976

Mr. Henry Merritt Farnum
Executive House
225 East 46th Street
NY, NY 10017

Dear Mr. Farnum:

With reference to my letter of May 10, I presented your letter of May 5 and attached "Notice of Personnel Director Action" to the Character Committee at its meeting on June 7, 1976. After discussion, the Committee unanimously declared that it adhered to its original decision requiring you to appear before a Court-appointed psychiatrist so that his report may be used as an aid to the Committee in considering your application. The Committee further declared that it adopted the statements made to you in my letter of March 2, 1976.

Very truly yours,

R. Keegan

Robert E. Keegan

REK:lrs

APPELLANT'S REPLY BRIEF TO MOTION TO DISMISS

FINALITY OF THE DECISION OF THE COURT OF APPEALS ON EIGHT SUBSTANTIAL FEDERAL CONSTITUTIONAL ISSUES

I. The appellant raised each of the eight Constitutional points before the Court of Appeals of the State of New York. The issue on the merits of said Constitutional points was joined by the appellee.

A. Appellant's brief dated December 10, 1975, set forth said eight Constitutional points designated I thru VIII. Said brief was offered December 10, 1975, filed and served January 15, 1976, printed under date of January 31, 1976, and filed and served February 4, 1976.

B. Appellee's affidavit January 16, 1976, requested decision on the merits (p.1, para. 3), supported by each of Exhibits A, B, C, and D on the merits. Appellee joined issue on each Constitutional point on the merits. He argued that each Constitutional point is "irrelevant." (Said Exhibit A, p. 6, paras. 24-25.)

II. Said Constitutional points I thru VII involving New York State statutes have been recognized as substantial federal questions since the late 1950's. (Supplemental Brief, *supra*, "S.B.", pp.1-7, see appellant's litigation on said Constitutional questions since 1957, cited in Jurisdictional Statement, hereafter JS, pp. 13-14.)

III. The "decision" of the Court of Appeals February 12, 1976, is a final decision exhausting appellant's State remedies and starting the running of appeal time. (JS, App. C-5.) This appeal seeks relief from the result that the State statutes challenged in said points I thru VII, and the State action in point VIII, continue to be enforced after said decision.

Those actions by the State are reaffirmed by appellee's letter to the appellant June 10, 1976 (SB, *supra*, p. 8). Appellee Character Committee of The Appellate Division, First Department, will continue to enforce said eight points thru its Court which thrice has denied each Constitutional argument by appellant on said eight points. (JS, App. C-1,C-2,C-3.)

Said decision is final because appellant cannot now file a second appeal within 30 days of a prior order or judgment.

APPELLANT ACTED REASONABLY IN PROSECUTING HIS APPEAL

IV. The new rule of the Court of Appeals shortened to nine months the time within which an appeal must be prosecuted. Previously there was no time limit. Said new rule was received by the Bar Association Library on November 6, 1975, fourteen days before appellant's nine-month period expired. If appellant had examined said rules each month after his notice of appeal, he would not have received notice until his time for prosecution had expired. If he had re-read said rules each day, he would have had fourteen days in which to prosecute.

In appellant's telephone conversation in early 1975 with the office of the Motion Clerk of said Court concerning a copy of the rules of the Court, he was referred to standard sources [App.A-1, herein]. Appellant was not put on notice of any new rules to be obtained from said Court.

Therefore appellant urges that having made diligent inquiry to the Court as to its rules, the effective date for him of the shortened time period was the date of receipt of the new rules by the Law Library on November 6, 1976.

In fact, appellant offered to submit his brief on December 10, 1975. That was twenty days after the nine months under the new rule had expired, and thirty-four days after the new rule was

received by the Law Library. (JS, App. A-3.)

When the period is shortened for prosecution so as to avoid dismissal for want of prosecution, a reasonable time must be allowed for submission of pending actions.

Dismissal was denied as unreasonable when a notice to dismiss was made less than one month after the new, shorter statutory time period became effective. The action for a peremptory writ had been instituted within about six weeks of said effective date. (*Coleman v. Superior Ct.* (1933), 135 Cal. App. 74, 26 P.(2d) 673.)

Denial of dismissal was held proper, altho more than a year had passed since the statute setting a shorter time period had become effective. *Shoemaker v. Superior Ct.* (1935) 4 Cal. App.(2d) 586, 41 P.(2d) 343; 112 A.L.R. 1165-6.)

The rule was established that "a reasonable time must have elapsed after the change in the remedy, to permit the party affected to safeguard his rights as against a mandatory dismissal. One year and five months after the statutory change to a shorter period, was a reasonable time. *Superior Oil Co. v. Superior Ct.* (1936) 6 Cal.(2d)113, 56 P.(2d) 950.)

In the instant case, for the appellant having made diligent inquiry as to the Court rules, the earliest reasonable date for the "party affected to safeguard his rights as against a mandatory dismissal" began to run on the date that the new, shorter time period was received at the Law Library on November 6, 1975; or such reasonable later time as this Court shall determine.

If said reasonable date is most stringently set at the first day of arrival of said new rule on November 6, 1975, the time period in the instant case of thirty-four days compares favorably with the periods of "less than one month" and "about six weeks" in the *Coleman* case *supra*, in which dismissal was denied.

V. It is not necessary that this Court find an

abuse of discretion. This Court need only decide that appellant acted reasonably under the facts of this case, and that the decision of said eight Constitutional points passed therefore from the Court of Appeals to this Court.

APPELLANT'S PROFESSIONAL CAREER IS IRREPARABLY INJURED BY SAID DECISION FEBRUARY 12, 1976

VI. Injury to an appellant by dismissal of a cause of action has been held to be reversible error even when there was admitted injury to an appellee by a delay in prosecution.

> There is strength in appellee's argument that it might be prejudiced by the passage of time;[3] but this argument is not sufficiently supported factually to overbalance the certainty of prejudice to appellant if deprived entirely of a retrial as authorized by our previous decision. *Rankin v. Shayne*, (1960) 108 App DC 47, 280 F2d at 56.

In the instant case, accepting appellee's own statement March 2, 1976 subsequent to the dismissal of said appeal, appellee has not been injured by any delay. (JS, App.A-2, para.2.) That conclusion is consistent with appellee's letters to the appellant January 7, 1975, December 16, 1975, its acceptance of appellant's letter September 30, 1975, and its pending Motion, none of which claim any injury from any delay. (Appee's Aff. January 16, 1976, Exhibits B, C and D respectively.)

A fortiori, the injury to the appellant's professional career by said dismissal overbalances any request by the appellee, who is uninjured by any delay in appellant's application for admission to the Bar.

VII. This Court further holds that, when the question of a holding by a Court on Constitutional points is tangled, this Court will grant certiorari as to said points, even if appeal on said points is not available. *Spencer v. Texas*, 385 US 554, 17 L.Ed.2d 606, 87 S.Ct. 648 (1966); *Dahnke-Walker Milling Company v. Bondurant, infra.*

APPELLEE DEMANDS THAT SAID APPELLATE DIVISION DECIDE ALL EIGHT SUBSTANTIAL CONSTITUTIONAL QUESTIONS

VIII. The appellant insisted upon said Constitutional points I thru VI before the appellee Character Committee, plus Point VII in said Appellate Division. (Appellant's initial draft of his petition filed with appellee on March 30, 1974 for the third interview on April 29, 1974; twenty-one specific citations, referring to each of the four interviews and set forth in appellant's brief January 31, 1976, p. 24; and in the final draft of appellant's petition filed October 2, 1974.)

This Court should apply in the instant case its holding:

> The court did not accede to the insistence, but applied and enforced the statute. Of course, that was an affirmation of its validity when so applied. *Dahnke-Walker Milling Company v. Bondurant*, 257 U.S. 282, 66 LE 239, 42 SC 106, with citations.

THEREFORE THIS COURT MUST INVOKE ITS JURISDICTION TO RESOLVE SAID EIGHT SUBSTANTIAL, FEDERAL CONSTITUTIONAL QUESTIONS, BECAUSE THE APPELLEE, AND THE COURT OF THE APPELLATE DIVISION TO WHICH THE APPELLEE WILL REFER SAID QUESTIONS, BOTH HOLD ALL CONSTITUTIONAL ISSUES TO BE IRRELEVANT.

CONCLUSION

THEREFORE PROBABLE JURISDICTION IN THIS COURT SHOULD BE NOTED, AND APPELLEE'S MOTION TO DISMISS SHOULD BE DENIED.

Dated: New York, New York, June 14, 1976.

Henry Merritt Farnum
Appellant, *pro se*

Executive House
225 E. 46 Street
New York, New York 10017

(212) 489-3594

AFFIDAVIT AS TO
NEW YORK COURT OF APPEALS RULES

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

TO WHOM IT MAY CONCERN:

Henry Herritt Farnum, residing at Executive house, 225 E. 46 Street, New York, New York 10017, being duly sworn, deposes and says.

The date of the telephone conversation set forth below was subsequent to the filing of the first Notice of Appeal by the undersigned to the Court of Appeals of the State of New York on November 19, 1974, and is believed to be shortly after his filing of the second Notice of Appeal thereto on February 19, 1975.

The undersigned telephoned the office of the Motion Clerk of the Court of Appeals concerning the rules of said Court applicable to his prosecution of his appeal. The Motion Clerk referred the undersigned to the usual rules of said Court. The usual publication of said rules was the volume of McKinney's replaced on November 6, 1975 (U.S. May 12, 1976, Appen. A-3). The undersigned obtained a copy of said rules then on the Law Library shelf, and abided by them.

The undersigned was not put on notice by said Motion Clerk as to any new rules to be obtained from said Court.

Henry Herritt Farnum

Sworn to before me this 14 day of June, 1976.

NOTARY

[SEAL]

MICHAEL E. SHAPIRO
NOTARY PUBLIC, State of New York
No. 41-3613625
Qualified in Queens County
Commission Expires March 30, 1977